

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. No. 27/2007

Lucknow this, the 18<sup>th</sup> day of November, 2008

HON'BLE MR. M. KANTHAIAH, MEMBER, (J)  
HON'BLE DR. A. K. MISHRA, MEMBER (A)

1. Surendra Prasad, aged about adult, son of Sri Shiv Sagar Lal;
2. Nand Kishore, aged about adult, son of Sri Sambhoo Nath,
3. Nasriuddin, aged about adult, son of Sri Kalloo.
4. Jagdish Prasad, aged about adult, son of Shri Deen Dayal,
5. Kali Prasad Sarkar, aged about adult, son of Shri P.K. Sonkar,
6. Prabhakar Mishra, aged about adult, son of Sri S.N. Mishra,
7. Kanhaiya Lal, aged about adult, son of Sri Baijoo,
8. Sripal, aged about adult, son of Sri Ram Charan,

(Address-C/o-Surendra Parsad, Switchman, Northern Railway, Balamau Railway Station, District-Hardoi.

Applicants.

(By Advocate Sri :D.Sinha for Sri Vinit Dixit)

Versus

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad.
3. Senior Divisional Operating Manager, Northern Railway, Moradabad.

Respondents:

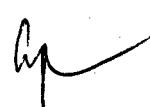
(By Advocate: Sri S. Verma)

Order

By Hon'ble Dr. A. K. Mishra, Member, (A):

This application has been made with a prayer to set aside the order dated 27.7.2006 of Respondent No. 3 who rejected the representation of the applicant for promotion to the next higher rank only the basis of suitability test and also for a direction to the respondents to promote them to the higher post of Guard Goods with all consequential benefits.

2. The applicants, who are jointly prosecuting this case, were working as Switchmen at different stations of Northern Railway. They had cleared the suitability test for the post of Guard Grade C which is presently redesignated as Goods Guard on many occasions during 1988 to 1996. Although, they were not required to appear in the test again as per Railway Board's Circular No. E/(NG) I-66 P. M.1-98 dated 13.10.1997, they complied with the direction of their superiors and appeared again in the test in the year 1996 and



Were declared successful. As per Railway Establishment Manual, those employees in the zone of selection, who have completed 5 years of service in the posts prescribed, are eligible for promotion to the post of Guard -C grade under 85% promotion quota. But unfortunately, though they passed the written test on 21.11.1996, they were not included in the list of 17 candidates who were promoted to the higher post of Guard C. It was alleged that there were two candidates at Serial No. 15 and 17 of the list published during September 1997, who were working as Cabin Men and as per the notification dated 27.6.1995 (Annexure A-2) inviting applications Cabin Men were to be considered only if suitable Switchmen were not available.

The applicants had filed O.A. No. 62/99 which was dismissed on 15.9.2005 on the ground that "once a person has participated in the selection, he is estopped from challenging on the ground of acquiescence as held in Vijay Syal Vs. State of Punjab 2003 (9) SCC -40." Subsequently, a review application was made and a ground was taken that some other employees have been promoted by the respondents only on the basis of the suitability test and therefore, the applicants should be considered in the like manner. As stated in paragraph 2 of the Counter reply the operative part of the direction given by this Tribunal in R.A. No. 01/2006 on 21.1.2006 is reproduced below:-

"However, in view of the specific assertions made in ground D as well as in rejoinder reply that certain persons have been promoted only on the basis of suitability test, it is open to the respondents to consider the promotion of the revisionists/applicants on the post of Guard Goods in Similar fashion."

The applicants made representation on that ground and it was rejected by the impugned order. However, on scrutiny of the records relating to RA 01/2006 it is seen that the review application was rejected in circulation on the ground that there was no error apparent on the face of records and that the applicants were trying to reargue as if it was an appeal.

3. Be that as it may, the respondents have taken the position that the post of Guard Goods is a selection post for which a candidate has to clear both the written test as well as viva voce before they are finally selected. The applicants have qualified in the written examination, but they were not successful in the viva voce; as such their names could not be included in the panel of select candidates. In O.A. No. 62/99 decided on 15.9.2005, it was argued by the respondents that Goods Guard is a selection post and as per para 215 of the IREM Volume -I in respect of selection posts, there has to be a positive act of selection consisting of both the written test as well as viva voce

5. The applicants having failed in the viva voce have no right for being empanelled. In the result, the O.A. was rejected on the ground that the applicants having participated in the selection are prevented from challenging it on the ground of estoppel and acquiescence.

4. As regards, selection of some other employees only on the basis of written test, it was clarified that such a selection was resorted to as an one-time measure keeping in view the instructions dated 13.10.99 of the General Manager to accommodate some surplus staff. And such one time measure cannot be quoted as a precedent and would not confer any right on the applicants.

5. The promotion of the applicants to Goods Guard cadre is governed by the provisions of Indian Railway Establishment Manual, which are statutory in nature. Therefore, the representation of the applicants for making an exception in their favour could not be granted. We find that the applicants do not have any legal right for promotion to the selection post of Goods Guard without qualifying in both the components of selection process: (a) written test and (b) Viva Voce. We do not find any legal infirmity in the impugned order rejecting their representation on this ground.

6. Accordingly, there is no merit in the application, which is dismissed. No costs.

*l. Mishra*  
(Dr. A. K. Mishra)  
Member (A)

*M. Kanthaiah*  
(M. Kanthaiah)  
Member (J)

18.11.2008